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Attorneys for Plaintiff, JIM GARCIA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JIM GARCIA,

Plaintiff,

v.

WAL-MART ASSOCIATES, INC.;
WALMART INC.; and DOES 1
through 100, inclusive,

Defendants.

Case No: 2:23-cv-01790 SVW (Ex)

*[Removed from Los Angeles County
Superior Court Case No. 23STCV01957]*

STIPULATED PROTECTIVE ORDER

Complaint Filed: January 30, 2023
Trial Date: Not Set Yet

1 Disclosure and discovery activity in this action are likely to involve production of
 2 confidential, proprietary, or private information for which special protection from public
 3 disclosure and from use for any purpose other than prosecuting this litigation may be
 4 warranted. The parties acknowledge that this Stipulated Protective Order (“Order”) does
 5 not confer blanket protections on all disclosures or responses to discovery and that the
 6 protection it affords from public disclosure and use extends only to the limited
 7 information or items that are entitled to confidential treatment under the applicable legal
 8 principles. The parties further acknowledge, as set forth in Paragraph 23, below, that
 9 this Order does not entitle them to file confidential information under seal; Civil Local
 10 Rule 79-5 sets forth the procedures that must be followed and the standards that will be
 11 applied when a party seeks permission from the Court to file material under seal.
 12 Accordingly, the parties have agreed to and have submitted to the Court, and for good
 13 cause shown the Court hereby enters, the following Order:

14 1. This Order shall govern the disclosure of materials designated as
 15 Confidential Material in this litigation. Confidential Material, as used in this Order, shall
 16 refer to any document or item designated as Confidential or Highly Confidential –
 17 Attorneys’ Eyes Only, including but not limited to, documents or items produced during
 18 discovery, all copies thereof, and the information contained in such material. Nothing in
 19 this Order shall require any party to produce any specific documents or category of
 20 documents which a party deems inappropriate for production.

21 **Definitions of Confidential Material**

22 2. Confidential Material, as used in this Order, consists of the following
 23 materials and categories of materials:

24 a. Materials relating to any privileged, confidential, or
 25 nonpublic information, including, but not limited to, trade
 26 secrets, research, design, development, financial, technical,
 27 marketing, planning, personal, or commercial information, as
 28 such terms are used in the Federal Rules of Civil Procedure

1 (Fed. R. Civ.) and any applicable case law interpreting Fed. R.
2 Civ. 26(c)(1)(G); contracts; non-public compilations of retail
3 prices; proprietary information; vendor agreements; personnel
4 files; claim/litigation information; and nonpublic policies and
5 procedures shall be deemed Confidential.

6
7 b. Materials containing corporate trade secrets, nonpublic
8 research and development data, including, but not limited to,
9 cost data, pricing formulas, inventory management programs,
10 and other sales or business information not known to the public;
11 information obtained from a non-party pursuant to a non-
12 disclosure agreement; and customer-related Protected Data
13 shall be deemed Highly Confidential – Attorneys’ Eyes Only.

14
15 c. Protected Data shall refer to any information that a party
16 believes in good faith to be subject to federal, state or foreign
17 data protection laws or other privacy obligations. Examples of
18 such data protection laws include but are not limited to The
19 Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq. (financial
20 information); and, The Health Insurance Portability and
21 Accountability Act and the regulations thereunder, 45 CFR Part
22 160 and Subparts A and E of Part 164 (medical information).
23 Certain Protected Data may compel alternative or additional
24 protections beyond those afforded Highly Confidential –
25 Attorneys’ Eyes Only material, in which event the parties shall
26 meet and confer in good faith, and, if unsuccessful, shall move
27 the Court for appropriate relief.
28

1 The parties shall not designate as confidential information that is already public
2 knowledge.

3 3. The parties agree that such Confidential Material as described in paragraph
4 2 should be given the protection of an order of this Court to prevent injury through
5 disclosure to persons other than those persons involved in the prosecution or defense of
6 this litigation.

7 **Procedure for Designating Information as Confidential**

8 4. To designate information as confidential, the producing party shall mark
9 Confidential Material with the legend “CONFIDENTIAL” or “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Parties shall submit confidential
11 discovery responses, such as answers to interrogatories or answers to requests for
12 admissions, in a separate document stamped with the appropriate legend designating
13 those responses as Confidential Material. The Receiving Party may make copies of
14 Confidential Material and such copies shall become subject to the same protections as
15 the Confidential Material from which those copies were made.

16 a. Information on a disk or other electronic format (e.g., a
17 native format production) may be designated confidential by
18 marking the storage medium itself (or the native file’s title)
19 with the legend “CONFIDENTIAL” or “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” The
21 Receiving Party shall mark any hard-copy printouts and the
22 storage medium of any permissible copies of such electronic
23 material with the corresponding legend contained on the
24 original and such copies shall become subject to the same
25 protections, as the Confidential Material from which those
26 copies were made.

27 b. Information disclosed at any deposition of a party taken
28 in this action may be designated by the party as confidential

1 by indicating on the record at the deposition that the
2 information is confidential and subject to the provisions of this
3 Order. Alternatively, the party may designate information
4 disclosed at the deposition as confidential by notifying the
5 court reporter and other parties in writing, within fifteen (15)
6 business days of receipt of the transcript, of the specific pages
7 and lines of the transcript which are designated as
8 confidential. The parties may agree to a reasonable extension
9 of the 15-business-day period for designation. Designations of
10 transcripts will apply to audio, video, or other recordings of
11 the testimony. During such 15-business-day period, the entire
12 transcript shall receive confidential treatment. Upon such
13 designation, the court reporter and each party shall affix the
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY” legend to the designated pages
16 and segregate them as appropriate.

17 5. A producing party may change the confidentiality designation of materials
18 it has produced, as follows: (1) The producing party must give the receiving parties
19 notice of the change by identifying the documents or information at issue. Once notice
20 is given, the receiving party must make good-faith efforts to ensure that the documents
21 or information are accorded treatment under the new designation. (2) Within a
22 reasonable period after giving notice, the producing party must reproduce the
23 documents or information in a format that contains the new designation. (3) If such
24 information has been disclosed to persons not qualified pursuant to paragraphs 12-13
25 below, the party who disclosed such information shall (a) take reasonable efforts to
26 retrieve previously disclosed Confidential Material; (b) advise such persons that the
27 material is Confidential; and (c) give the producing party written assurance that steps (a)
28 and (b) have been completed.

Data Security

6. The Parties agree to provide adequate security to protect data produced by the other parties or by non-parties. This includes secure data storage systems, established security policies, and security training for employees, contractors and experts. Adequate security also includes such measures as data encryption in transit, data encryption at rest, data access controls, and physical security, whether hosted/outsourced to a vendor or on premises. At a minimum, any receiving party subject to the terms of this Protective Order, will provide reasonable measures to protect non-client data consistent with the American Bar Association Standing Committee on Ethics and Professional Responsibility, Formal Opinion 477R.

Clawback Provisions

7. The production of privileged or work-product protected documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding.

8. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence (FRE) 502(d) and shall be enforceable and granted full faith and credit in all other state and federal proceedings by 28 U.S. Code § 1738. In the event of any subsequent conflict of law, the law that is most protective of privilege and work product shall apply.

9. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production.

10. If the receiving party has reason to believe that a produced document or other information may reasonably be subject to a claim of privilege, then the receiving party shall immediately sequester the document or information, cease using the document or information and cease using any work product containing the information, and shall

1 inform the producing party of the beginning BATES number of the document or, if no
2 BATES number is available, shall otherwise inform the producing party of the
3 information.

4 11. A producing party must give written notice to any receiving party asserting
5 a claim of privilege, work-product protection, or other ground for reclaiming documents
6 or information (a “clawback request”). After a clawback request is received, the receiving
7 party shall immediately sequester the document (if not already sequestered) and shall not
8 review or use that document, or any work product containing information taken from that
9 document, for any purpose. The parties shall meet and confer regarding any clawback
10 request.

11 **Who May Receive Confidential and Highly Confidential Information**

12 12. *Confidential Material.* Any Confidential Material and the information
13 contained therein shall be disclosed only to the Court, its staff, in-house counsel and
14 outside counsel of record for each party, and also shall be disclosed on a need-to-know
15 basis only to the parties, counsel’s staff personnel, employees of a party to whom
16 disclosure is necessary in connection with the preparation for and trial of this action, and
17 any witnesses in the case (including consulting and testifying experts) as may from time
18 to time reasonably be necessary in prosecution or defense of this action.

19 13. *Highly Confidential—Attorneys’ Eyes Only Material.* Material and
20 information designated as “Highly Confidential—Attorneys’ Eyes Only” shall only be
21 disclosed to the Court, its staff, in-house and outside counsel of record for each party,
22 the secretarial, clerical, and paralegal staff of each, and consulting and testifying experts
23 retained by a party in this action.

24 14. *Restriction on Disclosure to Direct Competitors.* Notwithstanding the
25 foregoing, Confidential Material shall not be disclosed to any current or former
26 employees of, or current or former consultants, advisors, or agents of, a direct
27 competitor of any party named in the litigation. If a Receiving Party is in doubt about
28 whether a particular entity is a direct competitor of a party named in this lawsuit, then

1 before disclosing any Confidential Material to a current or former employee, consultant,
2 advisor, or agent of that entity, the Receiving Party's counsel must confer with counsel
3 for the Producing Party.

4 15. *Persons Receiving Confidential Information Must Sign Exhibit A.* Counsel
5 for each party shall advise all persons to whom Confidential Material is disclosed
6 pursuant to this Order of the existence of this Order and shall provide all such persons
7 (other than the Court and its staff) with a copy of this Order. Counsel shall also require
8 such persons to execute the Affidavit attached as ***Exhibit A***, prior to the disclosure of
9 Confidential Material.

10 16. *Duties in the Event of Unauthorized Disclosures.* It shall be the obligation
11 of counsel, upon learning of any unauthorized disclosure or threatened unauthorized
12 disclosure of Confidential Information, or any other breach or threatened breach of the
13 provisions of this Order, to promptly notify counsel for the Producing Party. The
14 notification shall be supplemented with reasonable details of the circumstances of the
15 disclosure in order to permit the producing party to understand and take appropriate
16 steps. Each party and its counsel agree to take reasonable and good-faith efforts to
17 contain or limit any breach promptly upon receiving notice of it, and to make reasonable
18 and good-faith attempts to retrieve any unauthorized disclosure of documents or
19 information. This provision does not limit the producing party's entitlement to damages
20 resulting from any breach of this Order.

21 **Authorized Uses of Confidential Material**

22 17. Confidential Material shall only be used for the purpose of litigating the
23 above-captioned lawsuit and may not be used in other lawsuits.

24 18. Persons having knowledge of Confidential Material and information due to
25 their participation in the conduct of this litigation shall use such knowledge and
26 information only as permitted herein, and shall not disclose such Confidential Material,
27 their contents or any portion or summary thereof to any person(s) not involved in the
28 conduct of this litigation.

1 19. If any person having access to the Confidential Material herein shall violate
2 this Order, he/she may be subject to sanctions by the Court and may be liable to pay for
3 the damages caused by his/her violation.

4 **Challenges to the Designation of Confidential Material**

5 20. Any party or interested member of the public may move the Court to
6 modify the designation of any documents or information produced in this litigation
7 (either to include additional protection with respect to confidentiality or to remove a
8 confidential designation). Before making such a motion, the party or an interested
9 member of the public shall first attempt to resolve such dispute with the producing
10 party's counsel. Pending resolution of any challenges to the designation of documents
11 or information, the material at issue shall continue to be treated as Confidential Material
12 until ordered otherwise by the Court. The burden shall be on the party seeking to
13 modify the designation to show that the producing party's designation is inappropriate.

14 **Withholding of Information**

15 21. *Non-relevant Attachments.* The parties will not produce non-relevant
16 attachments that are attached to relevant emails. When an attachment is withheld, either
17 for privilege or non-responsiveness, the producing party shall produce a one-page TIFF
18 image (or PDF if production format dictates) in place of the withheld attachment,
19 correspondingly stating "Attachment Withheld-Privileged" or "Attachment Withheld-
20 Nonresponsive", and bearing a sequential BATES number within the family BATES
21 range. If any attachment to an email contains responsive content, then the cover email
22 shall be produced for context, regardless of the cover email's responsiveness. The cover
23 email may be redacted in part to remove sensitive information, as described below.

24 22. *Redactions.* The parties may redact (1) information that is privileged or
25 protected from discovery as work product or by reason of any other applicable privilege
26 or immunity; (2) information subject to non-disclosure obligations imposed by
27 governmental authorities, law or regulation (e.g., protected personal information); and
28 (3) sensitive, non-relevant information, including but not limited to personally

identifiable information, trade secrets, or information regarding products, data, or people. Privilege redactions will state, over the redacted portion, “Redacted—Privileged,” and all other redactions will state, “Redacted—Nonresponsive.” Redactions of emails will not redact the names of recipients or the subject line of the emails, unless the subject line is itself privileged or contains the sensitive information described above, in which case only so much of the subject line will be redacted as may be needed. The parties will produce redacted documents in TIFF format (or searchable PDF if production format dictates; or in native format for file types that do not convert well to TIFF/PDF, such as Excel files) with corresponding searchable OCR text and the associated metadata for the document, ensuring the redacted content is fully protected from disclosure.

Confidential Material In Filings, Hearings, and Trial

23. *Confidential Material in Filings.* Without written permission from the Producing Party or court order secured after appropriate notice to all interested persons, a party may not file Confidential Material in the public record in this action (or in any other action, such as an appeal). A party that seeks to file under seal any Confidential Material must comply with Civil Local Rule 79-5. Confidential Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Confidential Material at issue.

24. *Manner of Sealing.* In the event Confidential Materials or portions of transcripts are sealed as confidential by the Court or as described in paragraph 23 above, they shall be filed in an envelope bearing the following designation when deposited:

CONFIDENTIAL

IN ACCORDANCE WITH THE PROTECTIVE ORDER OF
THE COURT, THE CONTENTS OF THIS ENVELOPE
SHALL BE TREATED AS CONFIDENTIAL AND MUST
NOT BE SHOWN TO A PERSON OTHER THAN THE

///

1 COURT, ATTORNEYS IN THIS CASE, OR TO PERSONS
2 ASSISTING THOSE ATTORNEYS.

3 25. *Confidential Material in Hearings and Trial.* The provisions of this Order
4 shall not affect, and this Order does not limit, the *admissibility* of Confidential Material
5 (or references to that material) as evidence at trial, or during a hearing or similar
6 proceeding in this action. Prior to using Confidential Material or the information
7 contained therein at any hearing that is open to the public, the party seeking to use the
8 Confidential Material must give at least seven (7) days advance notice to the producing
9 party of the intent to use the Confidential Material so that the producing party may seek
10 an appropriate Court Order to protect the Confidential Material.

11 **Continuing Effect of this Order and Duty to Destroy**

12 26. This Order shall continue to be binding throughout and after the conclusion
13 of this litigation, including all appeals. Within thirty (30) days of settlement or final
14 adjudication, including the expiration or exhaustion of all rights to appeal or petitions for
15 extraordinary writs, each party or non-party to whom any materials were produced shall,
16 without further request or direction from the Producing Party, promptly destroy all
17 Confidential Materials and Highly Confidential—Attorneys’ Eyes Only Materials
18 including, but not limited to, copies or summaries thereof, in the possession or control of
19 any expert or employee. This requirement to destroy includes all documents designated
20 as Confidential Material and Highly Confidential—Attorneys’ Eyes Only Materials, and
21 that contain Confidential Material or and Highly Confidential—Attorneys’ Eyes Only
22 Material. The Receiving Party shall submit a written certification to the Producing Party
23 by the 30-day deadline that (1) confirms the destruction/deletion of all Confidential
24 Material and Highly Confidential—Attorneys’ Eyes Only Material, including any copies
25 of Confidential Materials provided to persons required to execute Exhibit A (Affidavit),
26 and (2) affirms the Receiving Party has not retained any copies, abstracts, compilations,
27 summaries or any other format reproducing or capturing any of the Confidential Material
28 and Highly Confidential—Attorneys’ Eyes Only Material. Notwithstanding this

1 provision, outside counsel is entitled to retain an archival copy of filings, depositions, and
2 deposition exhibits.

3 **Procedure if Confidential Material Is Required to be Produced**

4 27. If any person receiving documents covered by this Order is served with a
5 subpoena, order, interrogatory, or document or civil investigative demand (collectively,
6 a “Demand”) issued in any other action, investigation, or proceeding, and such Demand
7 seeks material that was produced or designated as Confidential Material by someone
8 other than the Receiving Party, the Receiving Party shall give prompt written notice by
9 hand or electronic transmission within five (5) business days of receipt of such Demand
10 to the party or non-party who produced or designated the material as Confidential
11 Material, and shall object to the production of such materials on the grounds of the
12 existence of this Order. At the request of the party or non-party who produced or
13 designated the material as Confidential Material, the Receiving Party shall refuse to
14 comply with the Demand unless (a) ordered to do so by a court with jurisdiction over
15 the Receiving Party; or (b) released in writing by the party or non-party who designated
16 the material as Confidential Material. The burden of opposing the enforcement of the
17 Demand shall fall upon the party or non-party who produced or designated the material
18 as Confidential Material. Compliance by the Receiving Party with any order of a court
19 of competent jurisdiction, directing production of any Confidential Material, shall not
20 constitute a violation of this Order.

21 **Application of this Order to Productions by Third Parties**

22 28. This Order may be used by third parties producing documents in connection
23 with this action. Third parties may designate information as Confidential or Highly
24 Confidential – Attorneys’ Eyes Only.

25 29. If a third party produces (or intends to produce) documents and does not
26 designate (or does not intend to designate) those documents as Confidential Material, then
27 any party to this action may seek to designate that third party’s documents or categories
28 of documents as Confidential Material. In that case, it will be the burden of the party

1 seeking protected status to move for a court order designating the materials as
2 Confidential Material after the parties confer.

3 30. In the event additional parties join or intervene in this litigation, the newly
4 joined party(ies) shall not have access to Confidential Material until its/their counsel has
5 executed and, at the request of any party, filed with the Court the agreement of such
6 party(ies) and such counsel to be fully bound by this Order.

7 31. The parties agree that nothing in this Order shall be deemed to limit the
8 extent to which counsel for the parties may advise or represent their respective clients,
9 conduct discovery, prepare for trial, present proof at trial, including any document
10 designated Confidential Material as set forth herein, or oppose the production or
11 admissibility of any information or documents which have been requested.

12 32. This Order shall remain in full force and effect until such time as it is
13 modified, amended, or rescinded by the Court.

14 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

15
16 Dated: April 17, 2023

Respectfully submitted,

FISHER & PHILLIPS LLP

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19 By: /s/ Victoria Shin

Juan C. Araneda

Victoria Shin

Attorneys for Defendants

WALMART INC. and WAL-MART

ASSOCIATES, INC.

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23 Dated: April 17, 2023

LICATA & YEREMENKO

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25 By: /s/ Imran A. Rahman

Vadim Yeremenko

Imran A. Rahman

Alex Hadjian

Attorney for Plaintiff

JIM GARCIA

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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5 DATED: 4/17/2023

 /s/ Charles F. Eick

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7 HONORABLE CHARLES F. EICK
8 United States Magistrate Judge
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EXHIBIT A TO ORDER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JIM GARCIA,

Plaintiff,

vs.

WAL-MART ASSOCIATES, INC.;
WALMART INC.; and DOES 1
through 100, inclusive,
Defendants.

2:23-cv-01790 SVW (Ex)

*[Removed from Los Angeles County
Superior Court Case No. 23STCV01957]*

AFFIDAVIT OF COMPLIANCE WITH PROTECTIVE ORDER

1. My name is _____. I live at _____
_____. I am working on behalf (or at the direction and
engagement) of _____.

2. I am aware that a Protective Order has been entered in the above-captioned lawsuit. A copy of this Protective Order has been given to me, and I have read and understand the provisions of same.

3. I acknowledge that documents and information designated as confidential and/or highly confidential pursuant to such Protective Order ("Confidential Materials") are being disclosed to me only upon the conditions that I agree (a) to be subject to the jurisdiction of this Court, and (b) to comply with that Order. I hereby agree to abide by such Order, subject to all penalties prescribed therein, including contempt of Court, for disobedience of said Order. I promise that the documents and information given confidential treatment under the Protective Order entered in this case will be used by me only to assist counsel for the parties in preparing for litigation of the above-captioned

1 matter. I understand that any use of such Confidential Material in any manner contrary to
2 the provisions of the Confidentiality Order may subject me to the sanctions of this Court
3 for contempt and to liability for any damages caused by my breach of the Protective
4 Order.

5 4. I shall not disclose nor permit to be reviewed or copied said Confidential
6 Materials, or any information derived from, by any person other than the parties and
7 counsel for the parties or members of their staff.

8 5. Within 30 days after the above-captioned lawsuit ends in a final non-
9 appealable order, I agree to destroy all Confidential Materials in my possession.

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11 DATED:

12 _____
13 Signature
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15 _____
16 Printed Name
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